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UTAH CODE ANNOTATED 1953

REPLACEMENT VOLUME 2

TITLE 8 CEMETERIES

- Chapter 1. Cemetery Maintenance District Law, 8-1-1 to 8-1-24.
2. Donations for Care, 8-2-1, 8-2-2.
3. Recording Plats and Conveyances, 8-3-1 to 8-3-4.
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CHAPTER 1

CEMETERY MAINTENANCE DISTRICT LAW

- Section 8-1-1. Policy of state—Assessments—Style and designation of law.
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- 8-1-24. Cities of first and second class excepted from act.

8-1-1. Policy of state—Assessments—Style and designation of law.—

The maintaining, improving and beautifying of cemeteries for the burial of the dead is declared to be one of the first considerations of a civilized people and a fixed and permanent policy of the state of Utah and a duty of beautifying, improving and maintaining the cemetery or cemeteries within their cemetery maintenance districts for the sole purpose of improving and maintaining existing cemeteries within said districts is imposed upon the cemetery maintenance boards, provided for in this act. It is declared and determined that any and all property within any cemetery maintenance district created under the provisions of this act is and shall be benefited ratably with all other property within such district in proportion to its assessed valuation by the creation of such district and by any and all improvements to the cemetery or cemeteries within such district for the maintenance of which such district was created and that all property within any such district shall be assessed equally in proportion to its assessed valuation for the purpose of cemetery improvement and maintenance under the provisions of this act.

This act shall be known as the Cemetery Maintenance District Law of the state of Utah and whenever cited, enumerated, referred to or amended may be designated as the Cemetery Maintenance District Law adding when necessary the number of the section.

History: L. 1945, ch. 17, § 1; C. 1943, Supp., 12-3-1.

Title of Act.

An act providing for the creation and organization of cemetery districts: providing for petition to organize such districts to be filed with county commissioners, notice of hearing of protests thereon, providing for notice of and holding the election, qualifications of electors, canvass of election and determination by the county commissioners of result of the election: providing for the appointment by the commissioners of a cemetery maintenance board of commissioners for said districts and fixing their term of office, filling of vacancies and for later election: providing for annexation of adjoining territory in same county and in adjoining counties: providing for organization of the board of cemetery commissioners, meetings to be held by them and fixing their official

bonds: prescribing such cemetery maintenance directors to be bodies corporate, fixing corporate powers, fixing general powers and duties of board of cemetery commissioners, empowering the cemetery maintenance district to take legal title to property, providing that the commissioners shall receive no compensation except their necessary expenses, prescribing the duties of the county assessor in connection with collection of taxes levied by the district, providing for levies by cemetery maintenance board of commissioners, limiting the indebtedness of the districts, fixing the duties of the treasurer of the districts and the manner of issuing district warrants.

Collateral References.

- Cemeteries—3.
- 14 C.J.S. Cemeteries § 3.
- Cemetery corporations or associations, 10 Am. Jur. 48, Cemeteries § 5.

8-1-2. Creation and organization of district.—Whenever twenty-five or more of the holders of title, or evidence of title to lands aggregating not less than 3,000 acres of contiguous territory or consisting of contiguous territory of less extent but having an assessed valuation of at least \$100,000 at the last preceding county assessment, desire to provide for the organization of the same as a cemetery maintenance district none of their said

lands being included within the boundaries of an already created and organized cemetery maintenance district under the terms of this act, such district may be created and organized as hereinafter provided.

History: L. 1945, ch. 17, § 2; C. 1943, Supp., 12-3-2.

8-1-3. Procedure—Petition—Contents and sufficiency of petition.—A petition shall first be presented to the board of county commissioners and filed with the clerk of the board of commissioners of the county in which the proposed cemetery maintenance district is situated signed by the number of holders of title or evidence of title specified in section 8-1-2 which petition shall plainly and clearly designate the boundaries of the proposed cemetery maintenance district, and shall state the name of the proposed district and shall be accompanied by a map thereof. The petition together with all maps and other papers filed therewith shall at all proper hours be open to public inspection in the office of said clerk of the board of commissioners between the date of their said filing and the date of the election. The petition may be in one paper or in several papers.

History: L. 1945, ch. 17, § 3; C. 1943, **Collateral References.**
Supp., 12-3-3.

Cemeteries 3.

14 C.J.S. Cemeteries § 3.

Compiler's Note.

The reference in this section to "section 8-1-2" appeared in the act as "section 2."

8-1-4. Hearing and determination—Notice—Boundaries.—When such petition is presented to the board of county commissioners and filed in the office of the clerk of such board the said board shall set a time for hearing upon such petition which time shall be not less than four nor more than six weeks from the date of the presentation and filing of such petition. A notice of the time of such hearing shall be published by said board once each week for three successive weeks previous to the time set for such hearing in a newspaper published within the county in which said district is situated. Said notice shall state that a cemetery maintenance district is proposed to be organized giving the proposed boundaries thereof and that any taxpayer within the proposed boundaries of such proposed district may on the date fixed for such hearing appear and offer any objection to the organization of such district, the proposed boundaries thereof or the including or excluding of any real property therein or therefrom. After hearing and considering any and all objections, if any such be interposed, the county commissioners shall thereupon make an order thereon either denying such petition or granting the same with or without modification and shall accordingly fix the boundaries of such proposed district in any order granting such petition. The boundaries so fixed shall be the boundaries of said district after its organization be completed as provided by this act and a map showing the boundaries of such proposed district as finally fixed and determined by the board of county commissioners shall be prepared and filed in the office of the clerk of said board.

History: L. 1945, ch. 17, § 4; C. 1943, Supp., 12-3-4.

8-1-5. Election to determine organization of district—Notice—Eligibility of voters.—After the county commissioners have made their order finally fixing and determining the boundaries of the proposed district, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held in such proposed cemetery maintenance district for the purpose of determining whether or not the same shall be organized under the provisions of this chapter. Such notice shall plainly and clearly designate the boundaries of such proposed cemetery maintenance district and shall state the name of the proposed district as designated in the petition and shall state that a map showing the boundaries of said district is on file in his office.

Such notice shall be published once in each week for three successive publications prior to such election in a newspaper within the county aforesaid. Such notice shall require the electors to cast ballots which shall contain the words “..... cemetery maintenance district, yes” or “..... cemetery maintenance district, no” or words equivalent thereto. No person shall be entitled to vote at any election held under the provision [provisions] of this chapter unless he shall possess all the qualifications required of electors under the general laws of the state and be a property owner of the proposed district.

History: L. 1945, ch. 17, § 5; C. 1943, Collateral References.
Supp., 12-3-5.

Cemeteries 3.

14 C.J.S. Cemeteries § 3.

Compiler's Note.

The bracketed word “provisions” was inserted by the compiler.

8-1-6. Conduct of election—Ballots—Precincts—Elector's oath—Judges.—Such election shall be conducted as nearly as practicable in accordance with the general laws of the state except that the provisions of the election laws as to the form and distribution of ballots shall not apply, no previous registration shall be necessary, and qualified electors shall be residents of said district who shall have paid a property tax in such district in the year next preceding the election. The board of county commissioners shall establish as many election precincts within such proposed cemetery maintenance district as will be convenient. There shall be added to the usual elector's oath in case of challenge the following words: “and I am a resident within the boundaries of the proposed cemetery maintenance district and have paid a property tax on realty in such district within the past year.” Said board of county commissioners shall also appoint three judges of election for each such election precinct who shall perform the same duties as near as may be as judges of election under the general laws of the state and the result of such election shall be certified and canvassed and declared by the board of county commissioners.

History: L. 1945, ch. 17, § 6; C. 1943, Supp., 12-3-6; L. 1957, ch. 12, § 1.

such district in case such districts be organized” at the end of the second sentence and inserted the words “on realty” in the oath.

Compiler's Note.

The 1957 amendment substituted “district as will be convenient” for “board of

8-1-7. Canvass of returns—Results—Curing defects in organization.—

Immediately after any election for voting upon the organization of a cemetery maintenance district, the judges of said election shall forward the official results of said election to the clerk of said board of commissioners. The said board of commissioners shall meet within ten days after said returns are received and shall proceed to canvass the votes cast at such election and if upon canvass it shall appear that less than a majority of those voting at such election or that less than one-third of all the qualified voters in said district who shall have paid a property tax in such district in the year next preceding the election, have voted "cemetery maintenance district, yes," then, in either event, a record of that fact shall be duly entered upon the minutes of said board, and all proceedings in regard to the organization of said district shall be void. If it shall appear upon such canvass, that a majority of those voting have voted "cemetery maintenance district, yes" and that included in said majority of votes more than one-third of all of the qualified voters in said district who shall have paid a property tax in such district in the year next preceding the election have voted "cemetery maintenance district, yes," the said board shall by order entered on its minutes declare such territory duly organized as a cemetery maintenance district under the name designated in the petition. After the election the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof and in no event shall any action be commenced or maintained or defense made affecting the validity of such organization after six months from and after the making and entering of the order provided for in this section. Such board shall cause one copy of such order, duly certified, to be filed for record in the office of the county recorder of the county in which said district is situated and shall transmit to the governor one certified copy thereof.

History: L. 1945, ch. 17, § 7; C. 1943, Supp., 12-3-7; L. 1957, ch. 12, § 1.

one-third of qualified voters for organization of a cemetery maintenance district.

Compiler's Note.

The 1957 amendment changed the requirement of one-half of qualified voters to majority of those voting or more than

Collateral References.

Cemeteries—3.
14 C.J.S. Cemeteries § 3.

8-1-8. Maintenance board—Appointment—Certificate of appointment—

Oath of office.—There shall be three cemetery maintenance commissioners in each district who shall constitute the cemetery maintenance board. The first cemetery maintenance commissioners of such cemetery maintenance district shall be appointed by the board of county commissioners. The certificate of such appointment shall be made in triplicate, one certificate shall be filed in the office of the county recorder of the county, one with the clerk of the board of county commissioners, and one with the assessor and tax collector of the county. Every cemetery maintenance commissioner shall take and subscribe the official oath which oath shall be filed in the office of the board of cemetery maintenance commissioners.

History: L. 1945, ch. 17, § 8; C. 1943, Supp., 12-3-8; L. 1951, ch. 13, § 1.

Compiler's Note.

The 1951 amendment changed the pro-

visions of the section relative to the appointment of the first cemetery commissioners.

Collateral References.

Cemeteries \Leftrightarrow 3.

14 C.J.S. Cemeteries § 3.

8-1-9. Subdivisions of district—Qualification of commissioners—Term of office—Filling vacancies.—At the meeting of the board of county commissioners at which the cemetery maintenance district is declared organized as provided by section 8-1-7 said board of county commissioners shall divide the cemetery maintenance district into three subdivisions as nearly equal in population, area, and mileage as practicable, to be known as cemetery maintenance commissioners subdistricts, one, two and three. Not more than one of said commissioners shall be an elector of the same cemetery maintenance subdistrict. The first commissioners appointed by the board of county commissioners shall serve until the next cemetery maintenance district election at which their successors shall be elected. Any vacancy occurring in the office of the cemetery maintenance commission other than by the expiration of the term of office shall be filled by the cemetery maintenance board.

History: L. 1945, ch. 17, § 9; C. 1943, Supp., 12-3-9; L. 1951, ch. 13, § 1.

tion 8-1-7" appeared in the act as "section 7."

Compiler's Notes.

The reference in this section to "sec-

The 1951 amendment substituted the words "board of county commissioners" in the third sentence for "governor."

8-1-10. Cemetery maintenance district commissioners—Election—Powers of commissioners—Conduct of elections—Subdivisions of district—Polls—Laws governing elections—Term of office.—On the first Monday of December, 1951 and every alternate year thereafter three cemetery maintenance district commissioners shall be elected by the electors of each cemetery district as defined in section 8-1-3. The board of cemetery maintenance commissioners shall have power to make such regulations for the conduct of such elections as are not inconsistent with any statutory provisions. At their meeting next preceding such election, the board of cemetery maintenance commissioners shall divide the district into three subdivisions as nearly equal in population, area and mileage as practicable to be known as cemetery maintenance commissioners subdistricts, one, two and three, at any one time not more than one shall be an elector of the same cemetery maintenance commissioners subdistrict. At the election on the first Monday in December, 1951 a commissioner from cemetery maintenance subdistrict one shall be elected for a term of four years and the commissioner from cemetery maintenance subdistrict three shall be elected for a term of two years and the commissioner from cemetery maintenance subdistrict two shall be elected for a term of six years, thereafter the term of office of all commissioners shall be six years. At elections for cemetery maintenance commissioners the polls shall be open from one o'clock to five o'clock in the afternoon. Except as otherwise provided by statute such elections and all other elections held under this law shall be held as nearly as practicable in conformity with the general laws of the state.

History: L. 1945, ch. 17, § 10; C. 1943, Supp., 12-3-10; L. 1951, ch. 13, § 1.

Compiler's Notes.

The reference in this section to "section 8-1-3" appeared in the act as "section 3 above."

The 1951 amendment changed the date from "December, 1945" to "December, 1951," and changed the terms of office of the first commissioners and extended the term of office following the first election from four to six years.

Collateral References.

Cemeteries—3.

14 C.J.S. Cemeteries § 3.

8-1-11. Annexation of adjoining territory—Procedure—Necessity for approval of board.—After the organization of a cemetery maintenance district, additional territory adjoining such district and lying within the same county may be added thereto and shall thereupon and thenceforth be included in such district by the affirmative vote of a majority of the qualified electors of such additional territory voting at an election held therefor which vote may be taken either at a general or a special election held as provided in section 8-1-5. But such additional territory shall not be annexed or be included within the district unless such annexation and inclusion be first approved by the cemetery maintenance board of the existing district by resolution entered on the minutes of such board prior to the election on the question of annexation. The same procedure with such modifications in the form of petition, notices, ballots, as may be necessary shall be adopted as in this law provided in sections 8-1-2 and 8-1-6 inclusive.

History: L. 1945, ch. 17, § 11; C. 1943, Supp., 12-3-11.

8-1-5" and "sections 8-1-2 and 8-1-6" appeared in the act as "section 5" and "sections 2 and 6" respectively.

Compiler's Note.

The references in this section to "section

8-1-12. Annexation of additional territory within adjoining county.—After the organization of a cemetery maintenance district additional territory adjoining such district and contiguous thereto, and located wholly within an adjoining county may be added to such district and become a part thereof as hereinafter provided. The proceedings for such annexation shall be the same as the proceedings for the creation and organization of a cemetery maintenance district with the following exceptions and modifications:

(1) Such proceeding may be initiated by ten or more of the holders of title or evidence of title to contiguous lands aggregating not less than 2000 acres or of less area but having an assessed valuation of at least \$100,000.

(2) A petition such as is required by section 8-1-3 shall be filed with the board of county commissioners of the county in which is situated the territory proposed to be annexed but shall accurately describe the boundaries of such territory and also name and describe the cemetery maintenance district to which annexation is sought and shall be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed and showing the location of the intervening county line. Such petition must be accompanied by a certified copy of a resolution of the board of cemetery maintenance commissioners of the original district consenting to such annexation.

(3) The notice of hearing on such petition shall state that certain territory therein described is proposed to be annexed to a cemetery main-

tenance district therein named and that any taxpayer within the boundaries of the territory proposed to be annexed may offer objections thereto at the time and place therein specified. The order entered by the local board of county commissioners on such petition shall if such petition be granted fix the boundaries of such annexed territory and direct that a map thereof be prepared under the direction of the clerk of the board of county commissioners of the county in which the original cemetery maintenance district is situated.

(4) An election shall be held in the territory proposed to be annexed and shall state the name of the district to which annexation is sought and that a map showing the boundaries of such district and of the territory proposed to be annexed is on file in the office of the clerk of the local board of county commissioners. Such notice shall prescribe the form of ballot to be cast which shall contain the words "In favor of annexation to Cemetery Maintenance District" and "Against annexation to Cemetery Maintenance District."

(5) The territory proposed to be annexed shall constitute one election and shall direct that the voter indicate his choice thereon by a cross (X).

(6) The territory proposed to be annexed shall constitute one election precinct and there shall be added to the usual elector's oath in case of challenge, the following words: "and I am a resident within the boundaries of the territory proposed to be annexed to . . . Cemetery Maintenance District." The returns of such election shall be canvassed by the board of the county commissioners of the county in which the territory proposed to be annexed is situated and if it shall appear from such canvass that more than one-half the votes cast by the qualified voters in said district who shall have paid a property tax in such district in the year next preceding the election are in favor of such annexation such board shall by order entered on its minutes declare such territory a part of the cemetery maintenance district to which annexation is sought and a certified copy of such order shall be transmitted to the cemetery maintenance board of the original district and also to the board of the county commissioners of the county in which such original district is situated. A certified copy of such order shall also be filed in the office of the county recorder of the county in which the territory proposed to be annexed is situated. Prior to the next district election following such annexation the cemetery maintenance board shall divide the district into two subdistricts each of which shall comprise all territory of the district situated within the boundaries of one county and thereafter the commissioners of such district shall be elected at large; provided, that not more than two members of the cemetery maintenance board shall be residents of the same county; provided, further, that the commissioner whose term of office first expires after such annexation shall be elected by the voters of the entire district from among the qualified electors of such annexed territory. Certified copies of appointments of secretary and treasurer of the district shall be filed with the clerk of the board of county commissioners and with the tax collector of each county in which any portion of the district is situated and all taxes levied by the district shall be certified to and extended, collected and re-

mitted by the proper officers of the county in which is situated the property subject to such levy.

History: L. 1945, ch. 117, § 12; C. 1943, Supp., 12-3-12; L. 1957, ch. 12, § 1.

and "election are in favor" for "election, shall have voted in favor" in subsec. (6).

Compiler's Note.

The 1957 amendment substituted "one-half the votes cast by the qualified voters" for "one-half of all the qualified voters"

Collateral References.

Cemeteries 3.
14 C.J.S. Cemeteries § 3.

8-1-13. Board of cemetery maintenance commissioners—Organization of board—Vacancies—Term and tenure of office—Secretary and treasurer—Certified copies of appointments—Regular and special meetings—Bills payable—Oath of office and bond.—Immediately after qualifying, the board of cemetery maintenance commissioners shall meet and organize as a board and at that time, and whenever thereafter vacancies in the respective offices may occur they shall elect a president from their number and shall appoint a secretary and treasurer who may also be from their number all of whom shall hold office during the pleasure of the board or for terms fixed by the board. The offices of secretary and treasurer may be filled by the same person. Certified copies of all such appointments under the hand of each of the commissioners shall be forthwith filed with the clerk of the board of county commissioners and with the tax collector of the county.

As soon as practicable after the organization of the first board of cemetery maintenance commissioners and thereafter when deemed expedient or necessary such board shall designate a day and hour on which regular meetings shall be held and a place for the holding thereof which shall be within the district. Regular meetings must show what bills are submitted, considered, allowed or rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what service or material, when and where used, amount claimed, allowed or disallowed. Such list shall be signed by the chairman and attested by the secretary; provided, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order, five days notice of special meetings; provided further, that whenever all members of the board are present the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board must be public and a majority shall constitute a quorum for the transaction of business. All records shall be open to the inspection of any elector during business hours.

The officers of the district shall take and file with the secretary an oath for the faithful performance of the duties of the respective officers. The treasurer shall on his appointment execute and file with the secretary an official bond in such an amount as may be fixed by the cemetery maintenance board which amount shall be at least sufficient to cover the probable amounts of money coming into his hands and twenty-five per cent thereof in addition thereto.

History: L. 1945, ch. 17, § 13; C. 1943, Supp., 12-3-13.

8-1-14. Body politic and corporate—Exercise of powers—Corporate name.—Every cemetery maintenance district organized as provided by law is a body politic and corporate and as such has the power specified in this chapter. Its powers can be exercised only by the cemetery board or by agents and officers acting under their authority or authority of law. The name of the district designated in the order of the board of county commissioners declaring the territory duly organized as a cemetery maintenance district shall be the corporate name of such district and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

History: L. 1945, ch. 17, § 14; C. 1943, Collateral References.
Supp., 12-3-14.

Cemeteries 3.
14 C.J.S. Cemeteries § 3.

8-1-15. Powers of maintenance district.—Each cemetery maintenance district has power:

1. To sue and be sued.
2. To purchase and hold lands, make such contracts, and purchase and hold such personal property as may be necessary or convenient for the purposes of this chapter.
3. To levy and apply such taxes for purposes under its exclusive jurisdiction as are authorized by law.

History: L. 1945, ch. 17, § 15; C. 1943,
Supp., 12-3-15.

8-1-16. Powers of commissioners.—The board of cemetery maintenance commissioners shall have power to manage and conduct the business and affairs of the district, make and execute all necessary contracts, and make and adopt all necessary rules and regulations for carrying out the purposes of this law.

History: L. 1945, ch. 17, § 16; C. 1943, Collateral References.
Supp., 12-3-16.

Cemeteries 3.
14 C.J.S. Cemeteries § 3.

8-1-17. Acquisition and possession of property—Legal title—Actions by and against board.—The legal title to all property acquired under the provisions of this chapter shall immediately and by operation of law, vest in such cemetery maintenance district and shall be held by such district in trust for and is dedicated and set aside to the uses and purposes set forth in this chapter. Said board is authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided and to institute and maintain any and all actions and proceedings, suits at law or in equity or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this chapter or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorney and in the manner of such cemetery maintenance district.

History: L. 1945, ch. 17, § 17; C. 1943,
Supp., 12-3-17.

8-1-18. Compensation and expenses of commissioners—Compensation of agents and employees.—The cemetery maintenance board commissioners

shall receive no compensation for their services as commissioners but shall receive the amount of their actual and necessary expense incurred in the performance of their official duties. The board shall fix the compensation, if any, to be paid to the other officers named in this chapter and of the agents and employees of the board to be paid out of the treasury of the district.

History: L. 1945, ch. 17, § 18; C. 1943, Collateral References.
Supp., 12-3-18.

Cemeteries 3.
14 C.J.S. Cemeteries § 3.

8-1-19. Levy of taxes by cemetery board.—On or before the first Monday in July of each year the county assessor shall deliver to the secretary of each cemetery maintenance district within the county a statement showing the aggregate valuation of all the taxable property in such district and thereafter the cemetery board shall levy the taxes herein provided for.

History: L. 1945, ch. 17, § 19; C. 1943,
Supp., 12-3-19.

8-1-20. Collection of tax—Amount or rate of tax.—At the last regular meeting of the cemetery maintenance board prior to the third Monday of September in each year the cemetery board of each cemetery maintenance district may levy for cemetery purposes a property tax in each cemetery maintenance district of not more than twenty cents on each \$100 in assessed value of taxable property within the cemetery maintenance district. Upon the levy being made by the cemetery maintenance board under this section it shall be the duty of the secretary of the district to transmit to the county auditor or clerk as the case may be a certified copy of the resolution providing for such levy immediately after the passage of the same. Said taxes shall be collected as provided by chapter 10, Title 59, Utah Code Annotated 1953.

History: L. 1945, ch. 17, § 20; C. 1943, Collateral References.
Supp., 12-3-20; L. 1957, ch. 12, § 1.

Cemeteries 3.
14 C.J.S. Cemeteries § 3.

Compiler's Note.

The 1957 amendment raised the rate from 10 cents on each \$100 to 20 cents on each \$100.

8-1-21. Power of board to incur indebtedness.—The cemetery maintenance board or other officers of the district shall have no power to incur any debt or liability whatever either by issuing bonds or otherwise in excess of the express provisions of this chapter and any debt or liability incurred in excess of such provisions shall be and remain absolutely void; provided, that for the purpose of organization or for any of the purposes of this chapter the cemetery maintenance board may before making the tax levy in the first year after the organization, incur an indebtedness not exceeding in the aggregate a sum equal to five cents on each \$100 in assessed value of taxable property within the district.

History: L. 1945, ch. 17, § 21; C. 1943,
Supp., 12-3-21.

8-1-22. Duty of treasurer of district.—It is the duty of the treasurer of the cemetery maintenance district to keep account with such district

[and] to place to the credit of such district all moneys received by him from the collector of taxes or from any other officer charged with the collection of taxes and the proceeds of taxes levied by the cemetery maintenance board or from any other sources and of all other moneys belonging to such district and to pay over all moneys belonging to such district on legally drawn warrants or orders of the district officers entitled to draw the same.

History: L. 1945, ch. 17, § 22; C. 1943, Supp., 12-3-22.

Collateral References.

Cemeteries↔3.

14 C.J.S. Cemeteries § 3.

Compiler's Note.

The bracketed word "and" was inserted by the compiler to indicate an apparent omission.

8-1-23. Drafts and warrants to be countersigned by secretary.—The secretary shall countersign all drafts and warrants on the district treasury and no payment of the district funds shall be made except on drafts or warrants countersigned by him. He shall not countersign any such draft or warrant until he has found that the payment has been legally authorized that the money therefor has been duly appropriated, and that such appropriation has not been exhausted.

Such warrants shall be drawn by and countersigned upon the order of the president of the cemetery maintenance board or in his absence the other members of the board but no drafts or warrants shall be drawn except upon the appropriation of the board nor in excess of the moneys actually in the district treasury except that warrants may be issued in anticipation of the collection of taxes but not in excess of the amount of the levy therefor nor shall any warrant be issued nor indebtedness incurred in anticipation of such levy except as herein provided. When a warrant is presented for payment if there is money in the treasury for the purpose the treasurer must pay the same and write on the face thereof "paid," the date of payment and sign his name thereto.

History: L. 1945, ch. 17, § 23; C. 1943, Supp., 12-3-23.

8-1-24. Cities of first and second class excepted from act.—The provisions of this act shall not apply to cities of the first or second class.

History: L. 1945, ch. 17, § 24; C. 1943, Supp., 12-3-24.

Collateral References.

Cemeteries↔3.

14 C.J.S. Cemeteries § 3.

CHAPTER 2

DONATIONS FOR CARE

Section 8-2-1. State treasurer to receive donations.

8-2-2. Investment of funds by commission of finance.

8-2-1. State treasurer to receive donations.—Money which has been or shall be declared by an instrument in writing to be intended for the perpetual care, maintenance, improvement or embellishment of any ceme-

tery, or of any lots therein, to an amount not less than \$50, may be deposited with the state treasurer, who shall, in the name of the state, receive and receipt for it. The depositors shall at the time of making such deposit file with the treasurer and with the secretary of state a copy of the instrument which declares the purpose for which the money so deposited is intended to be applied. If the cemetery is held in private ownership, the deposit shall be accompanied by a written agreement on the part of the person, association or corporation operating the same that the income derived from the sum so deposited will be applied to the purposes designated by the depositor as set forth in the instrument filed with such deposit.

History: L. 1921, ch. 10, § 1; R. S. 1933 & C. 1943, 12-1-1.

Dedication and use of land for burial grounds, 10 Am. Jur. 489, Cemeteries § 6 et seq.

Collateral References.

Cemeteries 17.

14 C.J.S. Cemeteries § 30.

8-2-2. Investment of funds by commission of finance.—The commission of finance shall with the approval of the governor invest the money which may be deposited with the state treasurer under the provisions of the preceding section in the name of the state, in bonds or other obligations of the state or of the United States, or in securities in which the commission is authorized to invest money in behalf of the state, and semiannually in each year it shall cause to be paid the accrued interest thereof to such person, association or corporation for the care, maintenance or improvement of any cemetery or cemetery lot where the money has been deposited for that purpose. If such cemetery is not held in private ownership, such interest shall be paid to the city or town in which the cemetery is located. At the time of paying such interest the treasurer shall inform the person, city or town to whom it is paid of the purpose to which it is to be applied as stated in the copy of the instrument which is filed with him, and the person, city or town to whom it is paid shall apply it to such purpose.

History: L. 1921, ch. 10, § 2; R. S. 1933, 12-1-2; L. 1941 (1st S. S.), ch. 6, § 1; C. 1943, 12-1-2.

sion of finance with the approval of the governor.

Compiler's Note.

The 1941 amendment divested the state treasurer of the power to invest funds, and substituted the provision that such funds are to be invested by the commis-

Collateral Reference.

Duty as regards use of proceeds of sales of cemetery lots, for care, maintenance, or improvement of cemetery, 124 A. L. R. 279.

CHAPTER 3

RECORDING PLATS AND CONVEYANCES

- Section 8-3-1. Plats of cemeteries must be recorded.
 8-3-2. Burial rights—Certificates of.
 8-3-3. Transcripts of to be filed for record.
 8-3-4. Violation of chapter a misdemeanor.

8-3-1. Plats of cemeteries must be recorded.—The executive officers of organizations and all individual owners in control of cemeteries, offering burial lots for sale in any county, shall file and cause to be recorded in the office of the county recorder of the county within which such cemeteries are situated an accurate plat thereof, which shall clearly show the sections of burial lots which have been disposed of and the names of the persons owning or holding the same, and the sections of burial lots held for disposal; and thereafter such executive officers or owners shall file additional plats of any additions to such cemeteries before offering for sale any burial lots therein. County recorders shall not collect any fees for filing and recording such original plats

History: L. 1905, ch. 130, § 1; C. L. 1907, § 632x5; C. L. 1917, § 1600; R. S. 1933 & C. 1943, 12-2-1.

Cross-References.

City cemeteries, 10-8-62.
County commissioners may lay out cemeteries, 17-5-56.
Eminent domain, 78-34-1 et seq.
Franchise and privilege tax, exemption, 59-13-4.
Tax exemption of public cemeteries, 59-2-1.
Towns may lay out cemeteries, 10-13-3.

Collateral References.

Cemeteries 3.

14 C.J.S. Cemeteries § 3.
Recording of plats, 10 Am. Jur. 489, Cemeteries § 6.

Cemetery property and cemetery lots as subject to assessment for public improvement, in absence of express exemption, 71 A. L. R. 322.
Cremation and crematories, 113 A. L. R. 1128.
Private or family cemeteries, 75 A. L. R. 2d 591.
Validity of public prohibition or regulation of location of cemetery, 50 A. L. R. 2d 905.

8-3-2. Burial rights—Certificates of.—Every purchaser of a lot or burial right therein shall be furnished by such executive officers or individual owners with a certificate of burial rights, properly executed, and the same may be filed and recorded by the county recorder of the county within which the cemetery is situated.

History: L. 1905, ch. 130, § 2; C. L. 1907, § 632x6; C. L. 1917, § 1601; R. S. 1933 & C. 1943, 12-2-2.

Cross-References.

Burial or removal permits, 26-15-20.
Death certificates, 26-15-17.
Disinterring dead bodies, selling or dissecting, felonies, 76-10-1, 76-10-2.
Duties of funeral directors, sextons, 26-15-19, 26-15-21.
Inquests, disposal of body and expense of burial, 77-58-17.
Probate Code, funeral expenses, payment under, 75-9-21.
University of Utah School of Medicine, use of dead bodies for promotion of science, 53-31-30 to 53-31-33.

Violating place of sepulture, misdemeanor, 76-10-3.

Collateral References.

Cemeteries 16.
14 C.J.S. Cemeteries § 31.

Rights and remedies as between cotenants of cemetery lots respecting burials therein, 10 A. L. R. 2d 219.
Use of cemetery grounds for purposes other than interment, 130 A. L. R. 130.

Law Review.

The Rights and Remedies of a Burial Lot Holder, 10 Iowa L. Bull. 72.

8-3-3. Transcripts of to be filed for record.—On the first days of January and July of each year such executive officers and individual owners offering burial lots for sale shall file with the county recorder of the county within which the cemeteries are situated a transcript, duly certified by them, of any and all deeds, certificates of sale or evidences of

burial rights issued by them during the preceding six months. The county recorders shall file such abstracts without charge and make any and all necessary notations upon the plats of the cemeteries theretofore filed with them.

History: L. 1905, ch. 130, § 3; C. L. 1907, § 632x7; C. L. 1917, § 1602; R. S. 1933 & C. 1943, 12-2-3. **Collateral References.** Cemeteries 16. 14 C.J.S. Cemeteries § 31.

8-3-4. Violation of chapter a misdemeanor.—A failure to comply with the requirements of this chapter by any executive officer or individual in control of any cemetery is a misdemeanor.

History: L. 1905, ch. 130, § 4; C. L. 1907, § 632x8; C. L. 1917, § 1602; R. S. 1933 & C. 1943, 12-2-4.

CHAPTER 4

OPERATION OF CEMETERIES, MAUSOLEUMS, AND COLUMBARIUMS

- Section 8-4-1. Persons subject to act.
- 8-4-2. Endowment care cemeteries—Non-endowment care cemeteries—Amounts to be deposited in endowment funds—Investment—Trustees of fund—Income.
- 8-4-3. Withdrawals from endowment fund.
- 8-4-4. Cemetery board—Powers and duties—Members—Term—Meetings—Expenses—Officers—Rules and regulations.
- 8-4-5. Power of examination.
- 8-4-6. Manner of making examination—Reports to board—Certificates of authority—Regulatory charge—Operating without authority, misdemeanor—Revocation or suspension of authority—Cemetery fund.
- 8-4-7. Present operators considered as operating endowment care cemetery if they comply with act.
- 8-4-8. Non-endowment cemeteries—Posting and otherwise informing persons it is a non-endowment cemetery.
- 8-4-9. Non-endowment cemetery converting to endowment cemetery—Procedure.
- 8-4-10. Unlawful to sell plot upon promise or inducement of resale at profit.
- 8-4-11. Violations of act—Penalty.

8-4-1. Persons subject to act.—Any person, firm or corporation engaged in the business, in the state of Utah, of the ownership, maintenance or operation of a cemetery; mausoleum for crypt or vault interments; columbarium for permanent cinerary interments; or any other place providing lots or other interment space therein for the remains of human bodies, except such organizations which are churches or religious or established fraternal societies, or incorporated cities or towns or other political subdivisions of the state of Utah owning, maintaining or operating cemeteries, shall be subject to the provisions of this chapter. The terms "cemetery" or "cemetery authority," when used in this act, shall include any and all places or establishments used for interment and referred to in this section.

History: L. 1955, ch. 11, § 1.

Title of Act.

An act relating to the operation of cemeteries, mausoleums, and columbariums

in the state of Utah, and providing for the setting aside of funds for the endowment care and maintenance thereof; for regulatory measures pertaining to the control and investment of said funds and the

sale of burial space therein; providing for the supervision thereof by the director of registration, department of business regulation; the establishment of a cemetery board and setting up its powers and duties; providing for the assessment of examination and annual fees and the creation of a cemetery fund therefrom; providing for the licensing and regulation of cemeteries, mausoleums and columbariums; and for penalties for violations of the act.

1. Sale of lots not sale of securities.

Where a cemetery corporation sells lots

and the price includes a contribution to a trust fund committed to perpetual care and maintenance, it cannot be assumed that the lots are being sold for speculative purposes and such sales are not sales of "securities" within the Securities Act. *Memorial Gardens of the Valley v. Love*, 5 U. (2d) 270, 300 P. 2d 628, 631.

Collateral References.

Cemeteries—5.

14 C.J.S. Cemeteries § 5.

Use of proceeds of sales, 10 Am. Jur. Supp. 49, Cemeteries § 11.1.

8-4-2. Endowment care cemeteries—Non-endowment care cemeteries—Amounts to be deposited in endowment funds—Investment—Trustees of fund—Income.—All such persons, firms or corporations, subject to the provisions of this chapter shall be, for the purposes hereof, designated either as operators of "endowment care cemeteries" or "non-endowment care cemeteries," which words and phrases shall have the following meanings ascribed to them:

(a) "Endowment care cemetery." Where the owners and operators or promoters of a cemetery represent to the public that they will, and that pursuant thereto, funds are collected for the purpose of caring for, maintaining, and embellishing said cemetery properties so as to preserve them from becoming unkept, and places of reproach and desolation in the communities in which they are located. An endowment care cemetery shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots or space, sold or disposed of:

- (1) Fifty cents a square foot for each grave.
- (2) Five dollars for each niche.
- (3) Thirty dollars for each crypt.

Any endowment care cemetery hereafter established shall also have deposited in its endowment care fund the additional sum of \$25,000.00 before disposing of any plot or space or making any sale thereof.

(b) "Non-endowment care cemeteries." Where the owners and operators or promoters of a cemetery collect funds only for sales of property, merchandise or services and collect no funds for, and make no agreements, representations, or promises as an endowment care cemetery as defined herein.

(c) An endowment care cemetery shall file in its principal office a written report which shall be available to any plot owner, and which shall state the amount of the principal of the endowment care fund and the total amount invested in lawful investments, and the amount of cash on hand which shall show the true financial condition of the trust.

(d) Any cemetery authority may place its property under endowment care, and establish, maintain and operate an irreducible endowment care fund. Endowment care and special care funds may be invested separately or commingled for investment and where commingled the income therefrom shall be divided between the funds in the proportion that each con-

tributed to the sum invested. The funds may be held in the name of the cemetery authority or its directors or in the name of the trustees appointed by the cemetery authority.

(e) Endowment care funds shall be kept invested in accordance with the provisions of 33-2-1, Utah Code Annotated 1953.

(f) The directors of the cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the cemetery authority. In lieu of a board of trustees a cemetery authority may appoint as sole trustee any bank or trust company qualified to engage in trust business, and the bank or trust company may accept the fund as trustee. No sum in excess of five per cent of the income derived from the fund in any year shall be paid as compensation to the trustees for their services.

(g) The income from the endowment care fund shall be used solely for the general care, maintenance and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery.

History: L. 1955, ch. 11, § 2.

ment of cemetery as affected by statute, 124 A. L. R. 279.

Collateral References.

Cemeteries ~~C-3~~.

14 C.J.S. Cemeteries § 12.

Validity and reasonableness of regulations of cemetery company as to improvement or care of lots, 32 A. L. R. 1406, 47 A. L. R. 70.

Proceeds of sale of cemetery lots, duty to use for care, maintenance or improve-

8-4.3. Withdrawals from endowment fund.—The initial endowment care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars (\$50,000.00), when it may be withdrawn at the rate of one thousand dollars (\$1,000.00) from the original twenty-five thousand dollars (\$25,000.00) for each additional three thousand dollars (\$3,000.00) added to the fund, until all of the original twenty-five thousand dollars (\$25,000.00) has been withdrawn.

History: L. 1955, ch. 11, § 3.

8-4.4. Cemetery board—Powers and duties—Members—Term—Meetings—Expenses—Officers—Rules and regulations.—(a) There is hereby established under the commission of the department of business regulation, department of registration, a representative committee for cemetery operators, officers and owners and directors of cemeteries to be known as the cemetery board. Said cemetery board shall have the same duties, rights and powers and shall be subject to all provisions, set out in Chapter One of Title 58, U. C. A. 1953 applicable to representative committees generally in other trades and professions and not in conflict herewith. Said cemetery board shall consist of five members, who shall be designated by the director of registration as provided in section 58-1-6 U. C. A. 1953. In designating members of such committee he shall be required to accept recommendations by members who are executives of endowment care cemeteries within the

state by members in the cemetery business, and organizations representing endowment care cemeteries as in this act defined. The names of all persons so designated shall be submitted to the governor for confirmation or rejection. The terms of the members first appointed shall expire: Two April 1, 1956, two April 1, 1957 and one April 1, 1958. Thereafter appointments shall be for three years.

(b) Not more than three members of the board shall be appointed only from persons who have had immediately preceding their appointment a minimum of two consecutive years' experience in this state in the active administrative management of a cemetery corporation or of a cemetery or as member of the board of directors thereof for this period and shall at the time of their appointment have the actual and full authority of a president, general manager, vice-president, secretary, treasurer, or owner, but they shall hold office only so long as they continue in such active, actual and authoritative capacities. The two year consecutive period shall be exclusive of time spent in the armed services.

(c) Each member of the board shall receive no compensation for his services, but shall receive his necessary traveling and other expenses. The board shall elect annually from among its members, a chairman and vice-chairman.

(d) The board shall meet at least twice a year or at such other times as it may designate. The board may meet at any place within the state. It shall submit to the director necessary rules and regulations for the administration and enforcement of, and prescribe the form of statements and reports provided for in this act. Said rules and regulations shall be, when adopted by the department of registration, endorsed as a part of its duties and functions.

History: L. 1955, ch. 11, § 4.

14 C.J.S. Cemeteries § 2.

Collateral References.

Regulation in general, 10 Am. Jur. 500,
Cemeteries § 19.

Cemeteries 3.

8-4-5. Power of examination.—The board shall examine persons relative to the administration and enforcement of this act and shall examine the endowment care fund of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years.

(b) Whenever the cemetery authority in charge of endowment care funds fails to file the report required by this act.

(c) Whenever it is requested by a verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this act, in which case the examination shall be at the expense of the petitioners.

(d) The expense of the examination as provided in subdivisions (a) and (b) shall not exceed \$25.00 per day for each examiner engaged in the examination. Whenever the examination requires more than two days, it shall be paid by the cemetery authorities. Such examination shall be privately conducted in the principal office of the cemetery authority.

History: L. 1955, ch. 11, § 5.

8-4-6. Manner of making examination—Reports to board—Certificates of authority—Regulatory charge—Operating without authority, misdemeanor—Revocation or suspension of authority—Cemetery fund.—(a) In making such examination the board (1) shall have free access to the books and records relating to the endowment care fund, their collection and investment and the number of graves, crypts and niches under endowment care, (2) shall inspect and examine the endowment care funds to determine their condition and the existence of the investments, (3) shall ascertain if the cemetery authority has complied with all the laws applicable to endowment care fund.

(b) Each cemetery authority in charge of cemetery endowment care funds shall file with the board annually on or before the 30th day of June, a written report on forms prescribed by the board setting forth: (1) the number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care:

(1) By specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in the endowment care fund segregated as to the amounts for crypts, niches and grave space by specific periods as set forth either on accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial condition of the funds. The report shall be verified by the president or vice-president and one other officer of the cemetery corporation and shall be certified by the accountant, auditor or person preparing the same.

(c) The board shall examine the reports filed with it as to their compliance with the requirements of the law. Applications in writing for a certificate of authority shall be made by all cemetery authorities, whether operating as endowment or non-endowment care fund cemeteries, to the department of registration accompanied by the regulatory charge provided for in this title. Such application must show that the cemetery authority owns or is actively operating a cemetery which is subject to the provisions of this title.

(d) Such applications shall be referred to the board, who may require such proof as it deems advisable concerning the compliance by such applicants to all the laws, rules, regulations, ordinances and orders applicable to it. Any cemetery authority who shall fail to pay the regulatory charges provided for under this act shall be referred to the board for its investigation and report.

(e) The board shall conduct examinations at the request of the director or upon their own motion to ascertain the qualifications, fitness and compliance under the terms of this act and shall submit to the director in writing their findings and conclusions.

(f) With any recommendation of the cemetery board to the director to revoke or refuse a certificate to any cemetery authority or any annual renewal thereof, it shall be the duty of the board to submit therewith in

writing its findings, reasons and conclusions. It shall be the duty of the board to make reports to the director of conduct or conditions existing on the part of a certificate holder justifying revocation or suspension of his or its right to a certificate. All provisions of Title 58, U. C. A. 1953, applicable to reports, investigations and examinations by the director; the revocation and suspension of licenses; rights to, and methods of calling and conducting, and all rights and powers relative to, hearings before the department; and the rules of procedure and appeal as set forth in said title, shall apply to all requirements of this act.

(g) The regulatory charges for cemetery certificates at all periods of the fiscal year are the same as provided in this act. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the fiscal year and shall expire at midnight the 30th day of January of each fiscal year. Failure to pay the regulatory charge prior to January 1, 1956, and prior to the first day of February for any succeeding year automatically shall suspend the certificate of authority. Such certificate may be restored upon payment to the department of registration of all prescribed charges.

(h) Every cemetery authority, including both endowment and non-endowment care fund cemeteries, shall pay for each cemetery operated by it, an annual regulatory charge not to exceed \$25.00 to be fixed by the department, which charges shall be deposited in the cemetery fund. Upon payment of said charges and compliance with the act, the department shall issue a certificate of authority.

(i) It shall be a misdemeanor for any cemetery authority to make any interment without a valid, subsisting and nonsuspended certificate of authority. Each interment shall be a separate violation.

(j) Upon violation of any of the provisions of this act, the director may revoke or suspend the certificate of authority of any cemetery authority.

(k) There shall be in the office of the state treasurer a fund to be known and designated as the cemetery fund. All regulatory fees and annual license charges collected under the provisions of this act, and in the absence of other provisions to the contrary, shall be paid at least once a month to the state treasurer to be credited to a special fund to be known as the cemetery fund. All moneys credited to the cemetery fund shall be used by the department of registration only to carry out the provisions of this act.

History: L. 1955, ch. 11, § 6.

8-4-7. Present operators considered as operating endowment care cemetery if they comply with act.—Any such person, firm or corporation, subject to the provisions of this chapter, who or which was engaged in the business of operating a cemetery as defined in this chapter, prior to the effective date hereof, shall be considered as operating an endowment care cemetery if said person, firm or corporation shall at all time subsequent to the effective date of this chapter comply with the requirements of an endowment care cemetery as set forth and required by the provisions of this act.

History: L. 1955, ch. 11, § 7.

8-4-8. Non-endowment cemeteries—Posting and otherwise informing persons it is a non-endowment cemetery.—In the office or offices of each non-endowment care cemetery where sales are conducted shall be posted in a conspicuous place, a legible sign stating: "This is a non-endowment care cemetery." The lettering of this sign shall be of suitable size so it is easily read at a distance of fifty feet. Each non-endowment care cemetery shall also have printed or stamped at the head of all its contracts, deeds, statements, letterheads and advertising material, the legend: "This is a non-endowment care cemetery," and shall not sell any lot or interment space therein unless the purchaser thereof is informed that the cemetery is a non-endowment care cemetery.

History: L. 1955, ch. 11, § 8.

8-4-9. Non-endowment cemetery converting to endowment cemetery—Procedure.—Any non-endowment care cemetery after the effective date of this chapter may become an endowment care cemetery by placing in the endowment care trust fund twenty-five thousand dollars (\$25,000.00) or five thousand dollars (\$5,000.00) per acre of all property sold, whichever is the greater, and shall comply with the requirements for an endowment care cemetery as provided in this act.

History: L. 1955, ch. 11, § 9.

8-4-10. Unlawful to sell plot upon promise or inducement of resale at profit.—It shall be unlawful for any person to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. A violation of this section is a misdemeanor and each violation shall constitute a separate offense.

History: L. 1955, ch. 11, § 10.

Collateral References.

Cemeteries \Rightarrow 3.

14 C.J.S. Cemeteries § 11.

8-4-11. Violations of act—Penalty.—Any cemetery, person, firm or corporation violating any of the provisions of this chapter, shall, upon conviction, be punishable by a fine of not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00) or, if a person, by said fine or by imprisonment in the county jail not exceeding one year or by both fine and imprisonment.

History: L. 1955, ch. 11, § 11.